

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 CR 50049 - 04	DATE	12/13/2004
CASE TITLE	United States vs. Hempstead		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

--

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] For the reasons stated on the reverse memorandum opinion and order, the court denies the motion for clarification and stipulation motion and order and dismisses this cause in its entirety.
(11)	<input checked="" type="checkbox"/>	[For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input checked="" type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	LC courtroom deputy's initials	DEC 14 2004 date docketed [Signature] docketing deputy initials 12-14-04 date mailed notice [Signature] mailing deputy initials	Document Number
			111

## MEMORANDUM OPINION AND ORDER

Theophilous Hempstead, a federal prisoner serving a 120- month prison sentence at a facility in Colorado, filed a “motion for clarification and stipulation motion and order,” seeking a clarification from this court, a stipulation from the government, and an “agreed order” from this court pursuant to such stipulation that he is entitled to 540 days of good time credit pursuant to 18 U.S.C. § 3624(b) and based on his 120- month sentence as opposed to the time he will actually serve in prison. The motion does not identify in any way under what authority it is being asserted.

The government, in its response, characterizes Hempstead’s motion as a petition under 28 U.S.C. § 2241 and contends that it should be dismissed as this court lacks jurisdiction to consider a §2241 petition by a prisoner housed in Colorado.

While Hempstead has not specified any particular authority for his unusual motion, it essentially seeks a stipulation from the United States Attorney’s office that prosecuted his case as well as a clarification and order from the court that originally sentenced him. To that extent, this court has jurisdiction to rule on the motion.

That being said, the court denies the motion because the government has not filed a stipulation and there is no indication that Hempstead has sought administrative relief from the Bureau of Prisons prior to filing his motion in this court. Even assuming this court had jurisdiction to examine the merits of the issue essentially raised by Hempstead, the Seventh Circuit has recently held that good time credit, as determined pursuant to 18 U.S.C. § 3624(b), is calculated based on time actually served as opposed to the length of the sentence itself. White v. Scibana, No. 04-2410, slip op. at 3-10 (7<sup>th</sup> Cir. Dec. 2, 2004). The Scibana case directly rejects Hempstead’s contention in this case.

For the foregoing reasons, the court denies the motion for clarification and stipulation and order.